IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

MONDAY, THE 19TH NOVEMBER 2007 / 28TH KARTHIKA 1929

WP(C).No. 32348 of 2007(A)

PETITIONER:

K.C.THOMAS, S/O.CHACKO, KALAVARA,
PUTHUMALA, VELLARMALA POST,
VELLARMALA AMSOM, DESOM, VYTHIRI TALUK,
WAYNAD DISTRICT.

BY ADV. SMT.CELINE JOSEPH

RESPONDENTS:

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1. STATE OF KERALA,
REP. BY THE DISTRICT COLLECTOR,
WAYANAD DISTRICT,
CIVIL STATION, KALPETTA.

2. DEPUTY TAHSILDAR,
REVENUE RECOVERY,
VYTHIRI TALUK, WAYANAD DISTRICT.

3. VILLAGE OFFICER,
VELLARMALA VILLAGE, VYTHIRI TALUK,
WAYANAD DISTRICT.

4. THE BRANCH MANAGER,
CANARA BANK, KALPETTA BRANCH.

5. RAJU THOMAS, S/O.K.C.THOMAS,
KALAVARA, PUTHUMALA POST,
MEPPADI (VIA), WAYANAD DISTRICT.

6. POOTHRA THODIYIL MUHAMMED,
S/O.HYDROSE, PUTHUMALA POST,
VELLARIMALA VILLAGE, VYTHIRI TALUK,
WAYANAD DISTRICT.

7. NARATHODI MUHAMMED ALI,

S/O.MUHAMMED, DO. DO.

8. KUNNATHUVEEDU MUHAMMED ALI,
S/O.MUHAMMED, DO. DO.

9. CHIRAYIMBRA AYSHA, D/O.AVARANKUTTY,
DO DO.

10. MULLAPPALLY ABU, S/O.HYDRU,
DO. DO.

11. MUSALIARAKATH M.SAIDALAVI,
S/O.ABOOBACKER, DO. DO.

BY ADV. SRI.P.GOPINATH MENON, SC, CANARA BANK

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

V.GIRI,J.

W.P (C) No. 32348 of 2007

Dated this the 19th November, 2007

J U D G M E N T

The petitioner stood as surety to the 5th respondent who availed a loan from the 4th respondent - Canara Bank the property having an extent of 10 acres was mortgaged by the loanee. The petitioner contends that notwithstanding sufficient security, Bank proceeded against the surety. The Bank had obtained a decree against the principal debtor, as evidenced by Exhibit-P2. The petitioner contends that notwithstanding the decree, recovery proceedings under the Revenue Recovery Act have been taken against the properties belonging to the petitioner. He therefore, instituted a suit as O.S.23/2006 before the Munsiff Court, Kalpatta for restraining respondents 2 and 3 from proceeding with the revenue recovery proceedings. The same was dismissed for default. The challenge in this writ petition is against the proceedings under the Revenue Recovery Act.

Learned counsel for the Bank Sri.P.Gopinatha Menon submits that Exhibit-P4 notice impugned in this writ petition was issued in the year 2005 and at any rate, since the petitioner had approached the Civil Court, it is up to him to prosecute the civil suit. In my view, since the petitioner was the surety for a loan availed by the 5th respondent, depending upon the terms and conditions of the loan agreement, his liability is co-terminous with the principal debtor. Essentially, the petitioner seeks a direction to the Bank to proceed against the mortgaged property first and then only proceed against

the personal assets of the surety. In my view, it is up to the creditor to decide the mode of recovery . Taking note of the fact that the mortgaged property seems to be sufficient, I direct the 4th respondent to issue notice to the petitioner and respondents 5 to 11 and then draw up a proceedings, evidencing the decision of the Bank regarding the methods to be adopted for realising the debt. It is open to the bank either to proceed against the mortgaged property in the first instance and then proceed against the personal assets of principal debtor and the surety or proceed simultaneously. Decision may be taken in this regard by the Bank, without further delay, at any rate, within three months from the date of receipt of a copy of this judgment.

Subject to the above direction, this writ petition is disposed of .

(V.GIRI, JUDGE)

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K.THANKAPPAN,J

CRL.A. NO.92 OF 1999

ORDER

25th May, 2007